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In the Supreme Court of the United States

OCTOBER TERM, 1979

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, PETITIONER

v.

KALO BRICK & TILE COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF IOWA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION AS AMICI CURIAE

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QUESTION PRESENTED

Whether the Interstate Commerce Act preempts state law authorizing a cause of action for damages brought by a shipper of goods in interstate commerce against a railroad based on the railroad's cessation of service to the shipper and abandonment of a line, where the Act empowers the Interstate Commerce Commission to approve the railroad's cessation of service and abandonment and affords remedies for violations of the railroad's statutory duties.

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because an award of damages for violation of state law would conflict with the Commission's determination that the cessation of service was lawful under federal law.

C. There is no merit to respondent's argument that state law is not preempted here because that law is "remedial" rather than "regulatory" in nature. The preemption doctrine turns on the *effect* of state law on the administration of a federal statute, not on labels. State law can regulate as effectively through an award of compensation as through an administrative process.

Respondent's reliance on *Pennsylvania R.R.* v. *Puritan Coal Mining Co.*, 237 U.S. 121 (1915), and its progeny is similarly misplaced. The Court emphasized in *Puritan* that state courts cannot award damages under state law where, as here, the railroad's practice is attacked as unreasonable and the expertise of the Commission is therefore required. In such a situation, the Court explained, the exclusive remedy is the federal damage action provided by Sections 8 and 9 of the Act. A state law cause of action may lie under *Puritan* only where the carrier is alleged to have violated its own rule or practice, lawful on its face, and resort to the Commission's expertise accordingly is not required.

ARGUMENT

THE INTERSTATE COMMERCE ACT PROVIDES THE EXCLUSIVE REMEDIES FOR A CESSATION OF SERVICE AND ABANDONMENT OF A RAILROAD LINE BY A CARRIER IN INTERSTATE COMMERCE AND THEREFORE PREEMPTS STATE LAW PURPORTING TO PROVIDE A DAMAGE REMEDY

Respondent seeks damages under state law for injuries it allegedly sustained as a result of petitioner's cessation of railroad service over and eventual abandonment of its line

between Fort Dodge and Kalo, Iowa.[1] It is clear, and both respondent and the Iowa Court of Appeals concede (Br. in Opp. 5–6; Pet. App. 5a), that petitioner's cessation of service following the April 1973 earth slides, and petitioner's subsequent abandonment of its line following the Commission's order of September 23, 1976 (Pet. App. 40a–41a), were governed by the Interstate Commerce Act. Respondent, like the Iowa Court of Appeals, maintains only that the remedies provided in the Act are "cumulative" to those provided under state law (Br. in Opp. 5–8; Pet. App. 5a).

Respondent contends, in essence, that by bringing a damage action under state law, it may bypass the damage remedy Congress has provided in 49 U.S.C. (1970 ed.) 8 and 9, recodified at 49 U.S.C. (Supp. II 1978) 11705(b)(2) and 11705(c)(1),[2] ignore proceedings before the Commission to determine the lawfulness of petitioner's conduct, and avoid the effect of the Commission's order finding petitioner's cessation of service and abandonment of its line to be lawful under the Act. We submit that Congress' policy of ensuring "[n]ational rather than local control of interstate railroad transportation," *Chicago* v. *Atchison, T. & S.F. R.R.*, 357 U.S. 77, 87 (1958), and of entrusting the "fostering care of the railroad system" to the Commis-

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[1] A statement of facts is contained at pages 3–7 of the government's brief at the petition stage in this case.

[2] In 1978, the Interstate Commerce Act was recodified without substantive change as subtitle IV of Title 49, United States Code. Pub. L. No. 95–473, 92 Stat. 1337. For convenience, references in this brief will be principally to the original Act because the decisions below, the controlling decisions of this Court, and the relevant decisions of the Interstate Commerce Commission cite the original Act. The Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94–210, 90 Stat. 31 (the "4–R Act"), made certain changes in Section 1 of the Interstate Commerce Act which, except as otherwise noted, are not pertinent to the issues in this case.

sion, *Purcell* v. *United States*, 315 U.S. 381, 385 (1942), cannot be so readily undermined.

A. The Interstate Commerce Act Confers On the Commission Plenary Authority To Regulate Permanent Abandonment Of And Temporary Cessations of Service Over Lines Used In Interstate Commerce And Provides Remedies For Violations

The Interstate Commerce Act confers on the Commission authority to regulate both permanent and temporary cessations of service over railroad lines used in interstate commerce. Section 1(18) of the Act, 49 U.S.C. (1970 ed.) 1(18), recodified at 49 U.S.C. (Supp. II 1978) 10903(a), prohibits a railroad from abandoning a line permanently unless the Commission determines that the public convenience and necessity permit the abandonment. In making this determination, the Commission must balance the needs of those being served by the line against the interests of the carrier and the demands of the nation's transportation system, in order "to provide the public with an efficient and nationally integrated railroad system." *ICC* v. *Railway Labor Ass'n*, 315 U.S. 373, 376 (1942). See also *Purcell* v. *United States*, *supra*, 315 U.S. at 384–385; *Colorado* v. *United States*, 271 U.S. 153, 162–164 (1926). Factors that may be considered in the abandonment decision include the profitability of the line, the financial condition of the carrier, the effect of abandonment on the local community, the importance of the line in intrastate and interstate commerce, the amount of money required to rehabilitate and maintain the line, the possibility that such funds would better be allocated to the carrier's other lines and facilities, and the prudence of the railroad in managing the line. See, *e.g.*, *Colorado* v. *United States*, *supra*, 271 U.S. at 163–164, 169; *Purcell* v. *United States*, *supra*;

ICC v. *Railway Labor Ass'n*, *supra*; *Maine Dep't of Transportation* v. *ICC*, 587 F.2d 541, 542–543 (1st Cir. 1978); *Missouri-Kansas-Texas R.R. Abandonment*, 338 I.C.C. 728, 741–746 (1971).

The Commission also has authority, under 49 U.S.C. (1970 ed.) 1(4) and (11), recodified at 49 U.S.C. (Supp. II 1978) 11101(a) and 11121(a), to regulate temporary cessations of service over a line used in interstate commerce. Sections 1(4) and 1(11) impose on interstate rail carriers the obligation to provide and furnish transportation upon reasonable request and to furnish safe and adequate car service to shippers under reasonable rules and practices.[3] It is well settled that when a rail carrier ceases or suspends service for reasons allegedly beyond its control (a practice commonly known as an "embargo"), the Commission has jurisdiction under these sections of the Act to determine the reasonableness and, therefore, the lawfulness of the cessation or suspension. Thus, a lawfully imposed embargo excuses a railroad from its obligation under Sections 1(4) and 1(11) to furnish transportation and car service.[4]

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[3] "Transportation," for these purposes, encompasses locomotives and cars as well as "instrumentalities and facilities" of shipment or carriage, such as track (49 U.S.C. (1970 ed.) 1(3), recodified at 49 U.S.C. (Supp. II 1978) 10102(23); *Winnebago Farmers Elevator Co.* v. *Chicago & N.W. Transp. Co.*, 354 I.C.C. 859, 872 (1978)). "Car service" concerns the use, supply, distribution, and interchange of locomotives and cars (49 U.S.C. (1970 ed.) 1(10), recodified at 49 U.S.C. (Supp. II 1978) 10102(3)), but not the transportation provided by means of these vehicles (*Winnebago Farmers Elevator Co.* v. *Chicago & N.W. Transp. Co.*, *supra*, 354 I.C.C. at 872). The Commission has broad powers under 49 U.S.C. (1970 ed.) 1(14)(a), recodified at 49 U.S.C. (Supp. II 1978) 11122, to establish rules and regulations defining carriers' service obligations.

[4] *ICC* v. *Chicago & N.W. Transp. Co.*, 583 F.2d 1025, 1027 n.2 (8th Cir. 1976); *ICC* v. *Maine Central R.R.*, 505 F.2d 590, 594 (2d Cir. 1974); *ICC* v. *Chicago, Rock Island & Pac. R.R.*, 501 F.2d 908, 911 (8th Cir. 1974), cert. denied, 420 U.S. 972 (1975); *Froehling Supply*

Various procedures and remedies ensure that the Act's abandonment, transportation, and car service policies are implemented soundly. First, the United States, the Commission, or a state may bring an action to enjoin a railroad from abandoning a line without first obtaining the Commission's approval. 49 U.S.C. (1970 ed.) 1(20), recodified at 49 U.S.C. (Supp. II 1978) 11505, 11702 and 11703.[5] In addition, a shipper or other interested party may file a complaint with the Commission alleging an unlawful abandonment (49 U.S.C. (1970 ed.) 13(1), recodified at 49 U.S.C. (Supp. II 1978) 11701(b)), may participate fully in abandonment proceedings before the Commission (49 C.F.R. 1121.36), and may seek judicial review of an abandonment order in the court of appeals pursuant to 28 U.S.C. 2321 and 2342(5).

The Commission may also initiate proceedings under 49 U.S.C. (1970 ed.) 13 to inquire into possible violations of Sections 1(4) and 1(11) and may enter an order finding a violation and requiring corrective action. If the carrier refuses to obey the order, the Commission, the Attorney General, or any injured party may bring an action in fed-

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Co. v. *United States*, 194 F.2d 637, 641 (7th Cir. 1952); *ICC* v. *Baltimore & Annapolis R.R.*, 398 F. Supp. 454, 463 (D. Md. 1975), aff'd, 537 F.2d 77 (4th Cir.), cert. denied, 429 U.S. 859 (1976); *Chicago & N.W. Ry.* v. *Union Packing Co.*, 373 F. Supp. 734, 736–737 (D. Neb. 1973), aff'd, 514 F.2d 30 (8th Cir. 1975); *New York Central R.R.* v. *United States*, 201 F. Supp. 958 (S.D.N.Y.), appeal dismissed, 371 U.S. 805 (1962); *Baltimore Chamber of Commerce* v. *Baltimore & O. R.R.*, 45 I.C.C. 40, 53 (1917).

[5] At the time that petitioner ceased service to respondent in 1973, Section 1(20) also authorized "any party in interest," including a shipper, to seek an injunction. The 4-R Act of 1976 repealed Sections 1(19)–1(22) of the Act and replaced them with a new Section 1a. Pub. L. No. 94–210, Sections 801(b) and 802, 90 Stat. 127–130. Paragraph 9 of the new Section 1a preserved the right to bring an injunctive action only on behalf of the United States, the Commission, or a state. The recodified sections are similarly limited. Compare 49 U.S.C. (Supp. II 1978) 11704.

eral district court for enforcement of the order. 49 U.S.C. (1970 ed.) 16(12), recodified at 49 U.S.C. (Supp. II 1978) 11702(a)(3), 11703 and 11705(a). If the Commission concludes that Sections 1(4) and 1(11) have not been violated, a shipper or any other injured party may seek judicial review of that order in the court of appeals.[6]

If a rail carrier fails to meet its duty to furnish transportation or car service, Section 8 of the Act renders the carrier liable in damages to persons injured as a consequence. 49 U.S.C. (1970 ed.) 8. Section 9 of the Act authorizes an injured party to file a complaint seeking damages either with the Commission or in federal district court, 49 U.S.C. (1970 ed.) 9, although in the latter situation "the primary jurisdiction doctrine requires initial submission to the Commission of questions that raise issues of transportation policy which ought to be considered by the Commission in the interests of a uniform and expert administration of the regulatory scheme laid down by [the] Act." *ICC* v. *Atlantic Coast Line R.R.*, 383 U.S. 576, 579 (1966), quoting *United States* v. *Western Pac. R.R.*, 352 U.S. 59, 65 (1956).[7] However, it is well settled that if an

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[6]The Commission long has had authority to order a rail carrier to provide itself with facilities for performing its car service obligations and to extend its lines in certain circumstances. 49 U.S.C. (1970 ed.) 1(21); see *ICC* v. *Oregon-Washington R.R.*, 288 U.S. 14, 37 (1933); *ICC* v. *Los Angeles*, 280 U.S. 52, 64–65 (1929). As revised in 1978, however, the Act gives the Commission authority to order a carrier to provide itself with facilities or equipment to improve its car service only if the carrier will recover the cost of its investments and if the ability of the carrier otherwise to furnish safe and adequate transportation service will not be materially and adversely affected. Pub. L. No. 95–607, Section 402, 92 Stat. 3067; 49 U.S.C. (Supp. II 1978) 11121 note. Such upgrading of facilities to meet federal car service obligations now may be ordered only with the "greatest care." S. Rep. No. 95–1159, 95th Cong., 2d Sess. 16 (1978).

[7]Relying on this Court's decision in *Powell* v. *United States*, 300 U.S. 276 (1937), a number of courts have held that Sections 8 and 9 do

embargo has been lawfully imposed under Sections 1(4) and 1(11), the carrier is not liable in damages under Sections 8 and 9 for the cessation of service. *ICC* v. *Chicago, Rock Island & Pac. R.R.*, *supra*, 501 F.2d at 911; *ICC* v. *Chicago & N.W. Transp. Co.*, *supra*, 533 F.2d at 1027 n.2; *General Foods Corp.* v. *Baker*, 451 F. Supp. 873, 876 (D. Md. 1978); *Asbury* v. *Chesapeake & Ohio Ry.*, 314 F. Supp. 310, 313 (D.D.C. 1970); *Chicago & N.W. Ry.* v. *Union Packing Co.*, 373 F. Supp. 734, 737 (D. Neb. 1973), aff'd, 514 F.2d 30 (8th Cir. 1975). See also *Eastern Ry.* v. *Littlefield*, 237 U.S. 140, 145 (1915).

In the present case, the Commission exercised its authority under the statutory provisions described above. The Commission found that the estimated cost of rehabilitating petitioner's line would be in excess of $100,000 and that "due to the soil condition and mining activities in the area, the repairs would not be sufficient to insure continuous operations on the line" (Pet. App. 35a). After weighing these and other considerations, the Commission authorized abandonment of petitioner's line (Pet. App. 39a, 41a), concluding that "continued operation of the line would be an unnecessary burden on [petitioner] and on interstate commerce" and that respondent could not "insist that a burdensome line be maintained solely for its own use" (Pet. App. 35a–36a).

The Commission also found that the cessation of service to respondent prior to the effective date of the order authorizing abandonment "occurred because of conditions over which [petitioner] had no control," *i.e.*, the earth

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not provide a damage remedy for unlawful abandonment. See *Ethan Allen, Inc.* v. *Maine Central R.R.*, 431 F. Supp. 740, 741 & n.4 (D. Vt. 1977); *Asbury* v. *Chesapeake & Ohio Ry.*, 314 F. Supp. 310 (D.D.C. 1970); *S.H. & W. Lumber Co.* v. *California & Oregon Coast R.R.*, 154 F. Supp. 152 (D. Ore. 1957); see also *Michigan Public Service Comm'n* v. *Mackinac Transp. Co.*, 43 F.R.D. 202, 203 n.1 (W.D. Mich. 1966). The Court need not address that issue here.

slides resulting from soil conditions and mining activities, "not because of willful abandonment" (Pet. App. 35a). This constituted a determination that petitioner's embargo[8]—its failure to furnish transportation and car service to petitioner after April 1973—was reasonable under Sections 1(4) and 1(11).[9]

Respondent did not avail itself of the various procedures under federal law to challenge the cessation of service and abandonment. For example, although respondent initially filed a protest to petitioner's abandonment application (Appendix in the Court of Appeals 50), it failed to comply

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[8] Petitioner's notice of April 4, 1973 to respondent, the only shipper on the line, that it could no longer supply cars (Pet. App. 15a) was adequate to institute an embargo. *Eastern Ry.* v. *Littlefield*, *supra*, 237 U.S. at 145; *Asbury* v. *Chesapeake & Ohio Ry.*, *supra*, 314 F. Supp. at 313.

[9] There are situations in which an embargo that is initially justified because of circumstances beyond the carrier's control may cease to be justified and may thereafter become an unauthorized abandonment when the carrier fails to take reasonable measures to repair tracks and restore service. In such circumstances, the Commission, the United States, or a state may seek to have the unlawful abandonment enjoined, necessary repairs made, and service restored. See page 8, *supra*. Courts have generally viewed the granting of injunctive relief as discretionary and have sometimes declined to order extensive repairs where an imminent Commission order permitting abandonment would render the expenditure wasteful. See generally *ICC* v. *Chicago & N.W. Transp. Co.*, *supra*, 533 F.2d at 1026–1029; *ICC* v. *Maine Central R.R.*, *supra*, 505 F.2d at 593–595; *ICC* v. *Chicago, Rock Island & Pac. R.R.*, *supra*, 501 F.2d at 911–916; *ICC* v. *Baltimore & Annapolis R.R.*, *supra*, 398 F. Supp. at 461–466; *Pennsylvania* v. *Penn Central Transp. Co.*, 348 F. Supp. 28 (M.D. Pa. 1972), aff'd, 475 F.2d 1394 (3d Cir. 1973).

The Commission's conclusion in the present case that petitioner's cessation of service was reasonable and that extensive repairs to petitioner's and the leased tracks would not ensure continuous operations on the line (Pet. App. 35a) necessarily includes a finding that petitioner's failure to rehabilitate the line and restore service on it after the earth slides in 1973 was reasonable and that the embargo therefore continued to be lawful through the time that abandonment of the line was authorized in 1976.

with the Commission's order of September 18, 1975 (*id.* at 28–29) that it file a statement of fact and argument, along with affidavits of witnesses, in support of its protest (Pet. App. 34a–35a; see also 49 C.F.R. 1100.45–1100.54 (1974)). The Commission held respondent in procedural default (see 49 C.F.R. 1100.46(b) (1974)) and issued its order approving the abandonment and embargo principally on the basis of the evidence submitted by petitioner. Respondent did not seek judicial review of the Commission's order. Nor did respondent file a complaint for damages under Sections 8 and 9 of the Act or bring an action in federal district court to enjoin what it believed to be an illegal abandonment, as it was then authorized to do (see note 5, *supra*).

B. The Substantive And Procedural Provisions Of The Act Respecting Abandonment And The Furnishing Of Transportation And Car Service Preempt State Law Authorizing Respondent's Causes Of Action

The Iowa Court of Appeals held that §§ 479.3 and 479.122 of the Iowa Code Ann. (West 1946), invoked by respondent in support of its claim for damages, impose on railroads "the unqualified and unconditional duty to furnish car service and transportation to all persons who apply" (Pet. App. 5a). These are, of course, the very subjects governed by Sections 1(4) and 1(11) of the Act, albeit under a rule of reason (see page 7, *supra*). Moreover, under the Court of Appeals' decision, respondent apparently would be entitled to recover damages for injuries resulting from the continuation of the cessation of service beyond the date of the Commission's order authorizing abandonment of the line—*e.g.*, for profits lost after that date or for interference with respondent's contractual relationships that would have extended beyond or been en-

line therefore calls for the exercise of the Commission's expert judgment about the needs of the interstate rail system as a whole, just as does the abandonment decision itself. See, *e.g.*, *Maine Dep't of Transportation* v. *ICC*, *supra*, 587 F.2d at 354; *Winnebago Farmers Elevator Co.* v. *Chicago & N.W. Transp. Co.*, *supra*, 354 I.C.C. at 877.[17]

A state court considering a claim that a railroad's failure to maintain or rehabilitate a line was "negligent" under state law could strike a different balance than would the Commission in determining the reasonableness of the railroad's conduct. The state court might, for example, attach relatively more weight to the shipper's and local community's desire to keep a marginal line in service indefinitely or might attach little or no weight to competing demands for the railroad's and the interstate rail system's limited resources. Hence, recognition of a state damage remedy based on the railroad's alleged negligence in maintaining a line would necessarily interfere with the Commission's exercise of its abandonment jurisdiction.[18]

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[17] If the Commission finds that a railroad intentionally allowed its line to fall into a state of disrepair in order to suffocate what would otherwise be a viable service and, thereby, to justify abandonment, it will find a "deliberate downgrading" of service and deny an abandonment application. *Missouri-Kansas-Texas R.R. Abandonment*, *supra*. If abandonment is denied, the Commission may, in appropriate cases, order an upgrading of the line sufficient to enable the railroad to meet its obligation under Section 1(4) to furnish rail transportation. *Winnebago Farmers Elevator Co.* v. *Chicago & N.W. Transp. Co.*, *supra*, 354 I.C.C. at 877-881.

[18] Congress recognized when it enacted the 4-R Act of 1976 that absorption by carriers of their losses on branch lines jeopardized the railroad industry's already precarious economic health (S. Rep. No. 94-499, *supra*). Section 802 of that Act instituted expedited abandonment procedures to ensure that these losses will not be needlessly suffered. See 49 U.S.C. (Supp. II) 10903 and 10904; H.R. Rep. No. 94-725, 94th Cong., 1st Sess. 54 (1975). Recognition of a state law cause of action in

This interference with federal interests would occur even if the acts complained of in the state proceedings preceded the railroad's filing of an application for abandonment—for example, even if the state courts in the present case were to limit damages to the period between April 1973 and September 1976, when the Commission authorized the abandonment. There is always some delay between the time an abandonment application is filed and the time the Commission grants or denies it. As in this case, an embargo is often in effect in the interim. If state law could compel a railroad to continue operations during this period, it would frustrate the Commission's abandonment authority by requiring massive last-minute commitments of funds solely to further a local interest.

For similar reasons, state law providing a cause of action based on allegations that a railroad's negligence in maintaining a line resulted in a cessation of service is also preempted by Sections 1(4) and 1(11). Such matters as the carrier's maintenance record, whether the initial halt in service was for reasons beyond the carrier's control, and possible justifications for failing to rehabilitate a line and restore service over it may all be relevant in determining the reasonableness of an embargo under these two sections. The proviso to Section 1(17)(a) of the Act (see page 15, *supra*) demonstrates that Congress did not intend to permit the states to impose independent and possibly inconsistent duties, under a negligence theory, governing the reasonableness of an interstate carrier's maintenance practices and ensuing embargoes. This is particularly so where, as here, an embargo is integrally related to an eventual abandonment of a line and the Commission must

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an abandonment situation would render abandonment all the more complicated and potentially expensive, thereby frustrating the congressional intent underlying the foregoing provisions of the 4-R Act.

consider the reasonableness of the carrier's past conduct with respect to both.

Thus, Congress has "unmistakably * * * ordained" that federal regulation of abandonment of lines and the furnishing of transportation and car service in interstate commerce preempts state regulation. *De Canas* v. *Bica*, 424 U.S. 351, 356 (1976), quoting *Florida Lime & Avocado Growers* v. *Paul*, 373 U.S. 132, 142 (1963). Indeed, "the nature of the regulated subject matter permits no other conclusion." *Ibid.*[19]

2. In any event, the state law relied upon by respondent is necessarily preempted in the circumstances of this case, because an award of damages based on a violation of state law would conflict with the Commission's order finding petitioner's cessation of service and ensuing abandonment to have been lawful under federal law.[20] See 49 U.S.C.

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[19] The state law invoked by respondent does not purport to regulate in an area that is traditionally a subject of state concern and that may impact on matters subject to the Commission's jurisdiction only incidentally or peripherally. Compare *Terminal Railroad Ass'n* v. *Brotherhood of Railroad Trainmen*, 318 U.S. 1, 4 (1943). Rather, the state law involved here seeks to establish duties to furnish transportation and car service in interstate commerce—the "central aim of federal regulation." *Jones* v. *Rath Packing Co.*, 430 U.S. 519, 525 (1977), quoting *San Diego Unions* v. *Garmon*, 359 U.S. 236, 244 (1959). Moreover, because regulation of interstate commerce by rail, perhaps as much as any other field, is not one "traditionally occupied by the States," *Jones* v. *Rath Packing Co.*, *supra*, 430 U.S. at 525, there is no occasion to indulge the presumption against preemption of state statutory and common law relied upon by respondent.

[20] Because the Commission had the opportunity, prior to trial in state court, to consider the legality under federal law of petitioner's cessation of service and abandonment, it is not necessary to consider in this case whether the primary jurisdiction doctrine required prior submission to the Commission of these federal law questions if a state law cause of action does survive here. Nevertheless, contrary to the Court of Appeals' conclusion (Pet. App. 10a–11a), we believe that the primary jurisdiction doctrine would be fully applicable in such circumstances. *ICC* v *Atlantic Coast Line R.R.*, *supra*, 383 U.S. at 579. That

1(17)(a) (state regulation even of intrastate service not valid where "inconsistent with any lawful order of the Commission"); *Perez* v. *Campbell*, 402 U.S. 637, 651–652 (1971); *Texas & Pacific Ry.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426 (1907); compare *Nader* v. *Allegheny Airlines, Inc.*, 426 U.S. 290, 299–300 (1976).

The result of allowing lawsuits such as this one to proceed would be to subject petitioner and other interstate railroads to conflicting obligations under federal and state law. Furthermore, imposition of state damage awards—or even the mere threat that they would be imposed—could result in a serious misallocation of scarce resources among the several states, thereby frustrating the Commission's

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doctrine, requiring deferral to the expert federal administrative agency, has been applied equally in cases brought under state law. *Service Storage & Transfer Co.* v. *Virginia*, 359 U.S. 171 (1959); cf. *FPC* v. *Louisiana Power & Light Co.*, 406 U.S., 621, 647 (1972) (diversity case).

Respondent's contention to the contrary (Pet. 11) appears to be not that prior resort to the Commission was unnecessary, but that the Commission's order should have no bearing on its state law damage action. If respondent believed petitioner's conduct was illegal under federal law, however, it should have litigated these issues more vigorously before the Commission. *Service Storage & Transfer Co.* v. *Virginia*, *supra*, 359 U.S. at 179. And if respondent wished to challenge the Commission's order finding petitioner's conduct lawful, it was required to seek judicial review of that order in the manner provided in the Interstate Commerce Act. *FPC* v. *Louisiana Power & Light Co.*, *supra*, 406 U.S. at 647; *Far East Conference* v. *United States*, 342 U.S. 570, 577(1952). But the Iowa courts are bound by the Commission's order that petitioner's conduct was lawful under federal law. *Service Storage & Transfer Co.* v. *Virginia*, *supra*, 359 U.S. at 177–178; see also *Ciba Corp.* v. *Weinberger*, 412 U.S. 640 (1973).

Respondent cannot avoid the binding effect of the Commission's order by arguing (Br. in Opp. 11) that the standard of "reasonableness" under federal law is different from that under respondent's negligence and other state law claims and that its state law causes of action therefore raise different issues. As explained in the text, it is precisely where such disparities between federal and state law exist that state law purporting to impose independent transportation and car service duties on carriers in interstate commerce is necessarily preempted.

fulfillment of its obligation to promote adequate, economical, and efficient transportation and to foster sound economic conditions in transportation among the carriers. 49 U.S.C. (1970 ed.) preceding 1, recodified at 49 U.S.C. (Supp. II) 10101(a)(1) and (2). See also *Purcell* v. *United States, supra.* Accordingly, recognition of a state law damage remedy in the circumstances of this case would "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Jones* v. *Rath Packing Co.*, 430 U.S. 519, 526 (1977), quoting *Hines* v. *Davidowitz*, *supra*, 312 U.S. 52, 67 (1941); *De Canas* v. *Bica, supra,* 424 U.S. at 363.

C. Respondent's Arguments In Support Of A State Law Cause Of Action Here Are Without Merit

1. *The Supposed "Remedial" Nature of State Law*

The Iowa Court of Appeals conceded (Pet. App. 10a) that if the state statutes in question here were "regulatory" in nature, "it could not be gainsaid that federal law is supreme, rendering state law void." But the court concluded (*ibid.*) that the state law relied upon by respondent is "remedial only" and "exerts no burden on interstate commerce, nor does it interfere with regulatory powers and duties of the ICC." Respondent makes the same argument (Br. in Opp. 7-8).

Preemption, however, does not turn on mere labels or the intent of the legislature in enacting the state law. *Perez* v. *Campbell, supra,* 402 U.S. at 650-652.[21] It is the *effect* of the state law on the accomplishment of the purposes underlying the federal statute that is determinative. *Jones* v. *Rath Packing Co., supra,* 430 U.S. at 526. As

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[21] As explained in our brief at the petition stage (at 11-12 n.4), the cases relied upon by respondent (Br. in Opp. 7 n.9) in no way suggest a distinction for preemption purposes between "regulatory" and "remedial" laws.

this Court stated in *San Diego Unions* v. *Garmon*, 359 U.S. 236, 247 (1959):

> [State] regulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy.

Moreover, as we have already explained (see pages 13–22, *supra*), and contrary to the assumption of the court below, an award of damages under state law for conduct authorized under federal law would exert a burden on interstate commerce and interfere with regulatory powers and duties of the Commission.

Finally, the preemption of state law in this case is not, contrary to respondent's contention (Br. in Opp. 7), "tantamount to the suggestion that every rail crossing case constitutes prohibited regulation of interstate commerce." The operation of trains at rail crossings has traditionally been subject to state regulation and does not require the Commission's expert consideration. Cf. *Terminal Railroad Ass'n* v. *Brotherhood of Railroad Trainmen*, *supra*, 318 U.S. at 4; note 19, *supra*. An injured party may therefore recover damages under state law for negligent operation of a train along an interstate railroad's right of way. See, *e.g.*, *Erie R.R.* v. *Tompkins*, 304 U.S. 64 (1938).[22]

2. *The* Puritan *Case*

The Court of Appeals' and respondent's reliance on *Pennsylvania R.R.* v. *Puritan Coal Mining Co.*, 287 U.S.

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[22] Railroad safety is regulated at the federal level by the Secretary of Transportation, principally pursuant to the Federal Railroad Safety Act of 1970, Pub. L. No. 91-458, 84 Stat. 971, 45 U.S.C. 431 *et seq.* Section 205 of that Act, 45 U.S.C. 434, addresses the delicate interplay of federal and state law in this area.

121 (1915), and several related decisions by this Court is misplaced (see Pet. App. 6a–10a; Br. in Opp. 5–8). In *Puritan*, the Court upheld an award of damages under state law to a shipper claiming that the railroad had failed to supply cars in accordance with a rule promulgated by the railroad itself. The Court stressed that in cases "where the [railroad's] rule of practice itself is attacked as unfair or discriminatory, a question is raised which calls for the exercise of the judgment and discretion of the administrative power which has been vested by Congress in the Commission." 237 U.S. at 131. In such a case, the Court stressed that the shipper's sole remedy lay in a claim for damages under Sections 8 and 9 of the Act, not in state court. The Court reached this conclusion notwithstanding the provision in 49 U.S.C. (1970 ed.) 22, recodified at 49 U.S.C. (Supp. II (1978)) 10103, that nothing in the Act "shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies." The Court held, however, that where, as in *Puritan*, a railroad is sued for violating its own rule or practice, which is lawful and unchallenged on its face, state court jurisdiction "to decide a mere question of fact as to whether the carrier has violated the rule to plaintiff's damage" was preserved by Section 22 of the Act. 237 U.S. at 132.

The limited nature of the holding in *Puritan*—that state court jurisdiction is preserved only where resort to the Commission's expertise regarding the application of federal law is not required—was expressly reaffirmed in *Illinois Central R.R.* v. *Mulberry Hill Coal Co.*, 238 U.S. 275, 281–283 (1915), and *Pennsylvania R.R.* v. *Sonman Shaft Coal Co.*, 242 U.S. 120, 124–126 (1916), upon which the Court of Appeals and respondent also rely.[23] See also

[23] In *Mulberry*, the plaintiff did not attack the railroad's rule of distributing cars, so no issue within the Commission's exclusive or pri-

T.I.M.E., Inc. v. *United States*, 359 U.S. 464, 472-474 (1959); *Midland Valley R.R.* v. *Barkley*, 276 U.S. 482, 487 (1928); *Eastern Ry.* v. *Littlefield*, *supra*, 237 U.S. at 143; *Texas & Pacific Ry.* v. *Abilene Cotton Oil Co.*, *supra*, 204 U.S. at 446-447; *Public Utilities Comm'n* v. *Baltimore & O. S.W. R.R.*, 281 Ill. 405, 411-414, 118 N.E. 81, 83-84 (1917). Compare *Nader* v. *Allegheny Airlines, Inc.*, *supra*, 426 U.S. at 298-299.

The instant case, in contrast to *Puritan*, involves an assertion by respondent that petitioner's "practice" of discontinuing service subsequent to the earth slides was unreasonable and unlawful. That is an issue only the Commission could resolve (subject, of course, to judicial review in the federal courts), and the Commission has done so here, rejecting respondent's contention. As *Puritan* itself holds, state law causes of action are preempted in these circumstances. In addition, *Puritan* and the other decisions of this Court relied upon in the decision below preceded the enactment of the Esch Car Service Act of 1917, ch. 23, 40 Stat. 101, which first gave the Commission jurisdiction with respect to car service, and the Transportation Act of 1920. These statutes plainly establish the Commission's plenary authority to fix a reasonable level of car service, and the latter added Section 1(17)(a) to the Act, which preserves state jurisdiction only with respect to intrastate service. See page 15, *supra*.

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mary jurisdiction was presented. 238 U.S. at 281-283. In *Sonman*, the Court found that industry conditions were normal and that the shipper's demands were reasonable; the carrier's rule or practice for allocating rail cars was therefore not a factor in the decision of the case, and the exercise of the Commission's expertise was not required. But in the instant case, conditions clearly were abnormal. Repeated earth slides had disrupted petitioner's line, and circumstances called for the administrative expertise of the Commission in determining whether the requirements of interstate commerce warranted continued service to respondent.

CONCLUSION

The judgment of the Court of Appeals of Iowa should be reversed.

Respectfully submitted.

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